UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHELE SNOW, Individually and On Behalf Of All Others Similarly Situated, Plaintiffs, - against - DOUBLEDAY, a division of RANDOM HOUSE, INC.; BANTAM DOUBLEDAY DELL PUBLISHING GROUP; RANDOM HOUSE, INC.; ANCHOR BOOKS, a division of RANDOM HOUSE, INC.; JAMES FREY, Defendants.	06 CV 00669 (RJH) (MHD)

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO STAY PROCEEDINGS PENDING A DECISION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Defendant Random House, Inc. ("Random House"),[1] by its attorneys, respectfully submit this memorandum of law in support of their motion for a stay of the above-captioned action. Random House moves this Court to stay this case pending a decision on a petition now pending before the Judicial Panel on Multidistrict Litigation ("JPML") in support of the establishment of a consolidated multidistrict proceeding for this and related litigation.

[1] In addition to defendants Random House and James Frey, the complaint purports to name as defendants "Doubleday, a division of Random House, Inc.", "Bantam Doubleday Dell Publishing Group" and "Anchor Books, a division of Random House, Inc.", none of which are separate corporate entities. Doubleday, Bantam Doubleday Dell Publishing Group and Anchor Books are divisions of Random House, Inc. Defendant Random House will move at the appropriate time to have these alleged parties dismissed from the action.

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INTRODUCTION

This action is one of eleven cases currently pending in federal courts across the country that stem from the publishing and marketing of the book "A Million Little Pieces" (the "Book") written by defendant James Frey (collectively, the "AMLP Actions"). The central allegation of the complaint here, and of all the other AMLP Actions, is that the Book contained fabricated or embellished events and was improperly published, advertised, or marketed as a "memoir."

In light of the number of AMLP Actions presenting common factual and legal issues, on February 23, 2006, Random House filed with the JPML a motion to consolidate and transfer the AMLP Actions (the "MDL Motion").[2] In the MDL Motion, Random House suggests that all of the AMLP Actions be transferred to the United States District Court for the Southern District of New York for consolidated pretrial proceedings, or, in the alternative, to the Northern District of Illinois.

Given the pendency of the MDL Motion, Random House now requests that this Court stay all pretrial proceedings in the instant case until the JPML has ruled. Awaiting the JPML's decision would serve the principal aims of multidistrict litigation – preserving resources of the courts and litigants and avoiding inconsistent decisions on the same pretrial issues – by allowing a single transferee court to consider the common legal and factual pretrial issues together and issue consistent rulings on such issues. *See In re Air Crash Near Kirksville, Mo., on Oct. 19, 2005*, 383 F. Supp. 2d 1382, 1383 (J.P.M.L. 2005); *Bd. of Trs. of the Teachers' Ret. Sys. v. WorldCom, Inc.*, 244 F. Supp. 2d 900, 905-06 (N.D. Ill. 2002). Numerous courts have previously recognized the propriety of staying proceedings while the JPML considers a motion to consolidate and transfer similar cases to a single transferee court.

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[2] The MDL Motion and memorandum in support thereof are attached as Exhibit B to the Declaration of Elizabeth A. McNamara ("McNamara Decl.") filed together herewith. A schedule of actions involved filed with the JPML is attached as Exhibit A to the McNamara Decl.

ARGUMENT

I. PRETRIAL PROCEEDINGS SHOULD BE STAYED PENDING THE JPML'S DECISION ON THE MOTION TO TRANSFER AND CONSOLIDATE

Federal courts possess inherent powers to stay proceedings before them. *Landis v. North America Co.*, 299 U.S. 248, 254-255 (1936) ("the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, counsel, and for litigants"). Courts have routinely exercised this inherent authority to stay pretrial proceedings during the pendency of a motion before the JPML seeking coordinated pretrial proceedings. Indeed, "a majority of courts have concluded that it is often appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial resources that are conserved." *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997)(citing cases).

There is a good reason that this is the majority rule: an interim stay promotes judicial economy and avoids inconsistent results. *See, e.g.*, *Worldcom, Inc.*, 244 F.Supp.2d at 905-06 (finding that "the interests of judicial economy and the threat of inconsistent rulings" favor a stay of all pretrial proceedings pending the JPML's transfer decision); *Johnson v. AMR Corp.*, 1996 WL 164415, at *3-4 (N.D. Ill. Apr. 3, 1996) (concluding that "the best course is to postpone ruling on the present motions ... and allow the MDL panel to determine whether to make its conditional final orders"); *see also In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990) (holding that "[c]onsistency as well as economy is served" by staying consideration of a remand motion pending a decision by the MDL Panel); *Tench v. Jackson National Life Insurance Co.*, 1999 WL

1044923, at *3-4 (N.D. Ill. Nov. 12, 1999) (staying all pretrial proceedings pending the JPML's transfer decision to "avoid duplicative efforts and preserve valuable judicial resources").[3]

So too here, both consistency and economy will be served by staying pretrial proceedings pending the JPML's decision on the motion to transfer and consolidate the AMLP Actions. If numerous courts, including this Court, proceed with pretrial matters in advance of the JPML's decision, then the efforts of the courts and litigants will be needlessly repeated many times over. For example, Random House (as well as author James Frey) now faces eleven complaints in federal courts across the country that challenge the publishing and marketing of the Book. (*See* Ex. A of McNamara Decl.) Assuming these actions are transferred and consolidated before a single district court, it would be common for the transferee court to direct that a single consolidated complaint be prepared, allowing the defendants to answer or otherwise respond once, rather than eleven times. *See* 8 Moore's Federal Practice, § 42.13[5][a] at 42-30.1 (noting advantages of consolidated complaints as management tool for complex litigation). Requiring

[3] *See also Lame Bull v. Merck & Co.*, 2006 WL 194277, at * 2 (E.D. Cal. Jan. 24, 2006) ("the interest of judicial economy favors staying this action pending its transfer to the MDL proceedings"); *Toppins v. 3M Co.*, 2006 WL 12993, at *1-2 (E.D. Mo. Jan. 3, 2006) ("Judicial economy weighs in favor of granting the request for a temporary stay pending a decision by the MDL panel."); *Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co.*, 2005 WL 3555926, at *1 (E.D.N.Y. Dec. 23, 2005) (noting that, in staying motion to remand pending decision by the MDL Panel, "valuable judicial resources will be preserved"); *Beal v. Merck & Co., Inc.*, 2005 WL 3279285, at *1 (W.D. Tenn. Dec. 1, 2005) (staying motion to remand because "in the absence of a stay, the risk to [the defendant] of duplicative motions and discovery is significant"); *Ramos-Martir v. Astra Merck, Inc.*, 2005 WL 3088372, at *1 (D.P.R. Nov. 17, 2005) (granting stay of all proceedings pending MDL's transfer decision because of the "undesireability of expending judicial resources familiarizing ourselves with the intricacies" of a case that is likely to be transferred); *Foti v. Warner-Lambert Co.*, 2005 WL 2036920, at *1 (E.D. La. Aug. 16, 2005) (staying all pretrial proceedings, including motion to remand, pending transfer decision by the MDL); *Mirabile, M.D. v. Blue Cross & Blue Shield of Kansas City, Inc.*, 2005 WL 1592661, at *2 (D. Kan. July 7, 2005) (finding that a stay of all proceedings pending a ruling by MDL "will serve the interests of justice, promote judicial economy, and prevent the parties from incurring unnecessary litigation costs in the meantime"); *Med. Soc'y v. Connecticut Gen. Corp.*, 187 F. Supp. 2d 89, 91-92 (S.D.N.Y. 2001) (deferring consideration of motion to remand pending transfer decision by MDL Panel).

that Random House now answer or otherwise respond to plaintiff's individual complaint in this action, or other pretrial matters, would result in a wasted duplication of effort.

Nor will such a stay unfairly prejudice plaintiff. If the MDL Motion is granted, and plaintiff's case is transferred, then the transferee court may consider any and all pretrial matters at that time. *See, e.g., In re Ivy*, 901 F.2d at 9. In the unlikely event the MDL Motion is denied, then the stay can be immediately lifted, and this Court can proceed with this matter as before. Under these circumstances, plaintiff faces no unfair prejudice from the requested stay.

II. REQUEST FOR ALTERNATIVE RELIEF

In the alternative, Random House requests a 35-day extension of time to answer or otherwise plead in response to plaintiff's complaint.

CONCLUSION

For the foregoing reasons, and the reasons set forth in its motion, Random House requests that its motion to stay be granted, and that the Court stay all pretrial proceedings pending the JPML's decision on the MDL Motion. In the alternative, Random House requests a 35-day extension of time to answer or otherwise plead in response to plaintiff's complaint.

Dated: New York, New York
February 28, 2006

DAVIS WRIGHT TREMAINE LLP

By: [signature]

Elizabeth A. McNamara (EAM1987)
Robert D. Balin (RB 5847)
Linda Steinman (LS 5906)
1633 Broadway
New York, New York 10019
(212) 489-8230

Attorneys for Defendant
Random House, Inc.

Of counsel:

Mark B. Blocker
Michael C. Andolina
Marissa J. Reich
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603
(312) 853-7000

Stephen G. Contopulos
Jennifer A. Ratner
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, California 90013
(213) 896-6000